



INTERIOR BOARD OF INDIAN APPEALS

Estate of Charles Walton Austin

37 IBIA 56 (11/15/2001)



United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS
INTERIOR BOARD OF INDIAN APPEALS
4015 WILSON BOULEVARD
ARLINGTON, VA 22203

ESTATE OF CHARLES WALTON AUSTIN : Order Affirming Decision
:
: Docket No. IBIA 01-138
:
: November 15, 2001

Appellant Layton Austin sought review of a May 18, 2001, order denying rehearing issued in the estate of his father, Decedent Charles Walton Austin, by Administrative Law Judge William E. Hammett. IP TC 212 G 99. For the reasons discussed below, the Board of Indian Appeals (Board) affirms that decision.

Decedent died on July 11, 1997. Judge Hammett personally served Appellant with a copy of the notice stating that he would hold a hearing to probate Decedent's trust or restricted estate on August 8, 2000. Appellant does not deny receiving notice of the hearing. However, the only person who attended the hearing was Decedent's non-Indian wife, Belen B. Austin. A document dated April 28, 1983, and purported to be Decedent's last will and testament was introduced at the hearing. On January 31, 2001, the Judge issued an order approving Decedent's will and distributing his estate to his wife in accordance with the terms of the will.

Appellant petitioned for rehearing. His petition consisted entirely of explanations as to why neither he nor his siblings had attended the original hearing. On May 18, 2001, the Judge denied rehearing, noting that Appellant had not presented "any legal issue or law which would be considered as a challenge to the findings and rulings made in the Order" approving the will.

Appellant then filed a notice of appeal with the Board. The notice of appeal consisted of justifications for the failure to attend the original hearing and statements that the siblings were now prepared to attend a hearing. Although the Board advised Appellant that he bore the burden of proving the error in the Judge's decision and that he could file a brief or statement in support of his appeal, Appellant did not file anything else with the Board.

The Board has consistently held that an appellant bears the burden of proving the error in an Administrative Law Judge's decision in a probate matter. An appellant who fails to make any allegation concerning how a probate decision is in error, let alone any argument in support of such an allegation, has not carried his burden of proof. See, e.g., Estate of Marlon Murray George, 36 IBIA 184 (2001); Estate of Jacob S. Tsotigh, Sr., 35 IBIA 87 (2000), and cases cited there. Appellant has failed to carry his burden of proof here.

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, Judge Hammett's January 31, 2001, and May 18, 2001, orders are affirmed.

//original signed
Kathryn A. Lynn
Chief Administrative Judge

//original signed
Anita Vogt
Administrative Judge